

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: Hyla P. Wagner, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Prenotice Discussion of Adoption of Regulations:
18227.5 - General Purpose Committees: State, County and City
18247.5 - Primarily Formed Committee

Date: September 30, 2008

Proposed Commission Action: Approve for public notice the adoption of Regulations 18227.5 and 18247.5, which seek to clarify the statutory definitions of general purpose and primarily formed committees.

Background: General purpose committees are defined in Section 82027.5 of the Act (Attachment 1). They are committees that support more than one candidate or measure in successive elections, such as political action committees (PACs) and political party committees. Whether a committee is a state, county or city general purpose committee determines where its campaign statements are filed. It is important that a general purpose committee file its campaign reports with the appropriate jurisdiction where it most active, because different contribution limits and additional disclosure requirements may apply.

Primarily formed committees are defined in Section 82047.5 of the Act (Attachment 1). They are committees that support a single candidate or measure, or several specific candidates or measures being voted on in the same election, including candidate election committees, school board slate committees, and committees supporting a particular ballot measure.

The reporting and disclosure obligations of primarily formed committees differ from those of general purpose committees in some significant ways. Both primarily formed committees and general purpose committees file semi-annual statements for each half of the year. (Section 84200.) Committees primarily formed to support a candidate or a measure are *automatically required* to file two preelection statements, 40 and 12 days before the election. (Section 84200.5) The preelection reports show the money the committees have spent on the candidate or measure, the cash on hand that may be spent on the candidate or measure, and the sources of these funds. General purpose committees must also file two preelection statements preceding a state, county, or city election, if they have spent \$500 on that election during the period covered by the statement. (Section 84200.5(d)-(g).) There have been cases where a general purpose committee has raised substantial contributions for an election but not spent or contributed anything until

very close to the election, resulting in no disclosure of the sources of the funds before the election.¹

Additional late reporting also applies to primarily formed committees during the period before an election. Primarily formed committees must file 497 Contribution Reports for all contributions of \$1,000 or more received during the 90-day election cycle (for state electronic filers) and 16-day late period preceding an election. General purpose committees, other than political party committees, are not required to file these reports of contributions coming in before an election.²

Whether a committee is primarily formed or general purpose has significant ramifications for ballot measure committees. The Act's advertisement disclosure provisions apply only to primarily formed ballot measure committees. The advertisement disclosure provisions require an advertisement for or against a ballot measure to list the top two donors of \$50,000 or more. (Section 84503 and Regulation 18450.1.) In addition, the name identification provisions, requiring a ballot measure committee to identify the economic or other special interest of its top \$50,000 donors, apply only to primarily formed committees. (Section 84504 and Regulation 18450.3.)

Reason for Proposal: The Technical Assistance Division has for many years wanted to have more specific guidance to give to committees concerning the definitions of "state," "county" and "city" general purpose committees, and for "primarily formed" versus "general purpose" committees. Committees frequently call to ask the FPPC questions about whether they are a state or local committee, or what constitutes a primarily formed committee, and we do not have definitive guidance to provide them. The authority that currently governs is contained in the statutory definitions themselves and the *Moll* Advice Letter, No. A-97-080, and is summarized in the campaign manuals.

In 2005, the Commission sponsored legislation on general purpose committees (AB 1391) which passed both houses of the Legislature but was ultimately amended by its author for a purpose unrelated to the general purpose committee provisions. Regulation 18227.5 draws on the language of that legislation.

Proposed Regulation 18227.5 General Purpose Committees: Interpreting Section 82027.5, this regulation sorts committees into "state," "county" or "city" level based on their political activity. To categorize the committees, the regulation examines the expenditures made by a committee to support state, county or city candidates. The

¹ This situation has partially been remedied in the case of independent expenditures, where late reports of independent expenditures require disclosure of contributions coming in that were used to make the independent expenditure, but the problem still exists for contributions made by a general purpose committee very close to the election.

² Both primarily formed committees and general purpose committees are required to file Form 496 Independent Expenditure Reports if they make an independent expenditure to support or oppose a candidate or measure during the 90-day election cycle (for state electronic filers) and the 16-day late period preceding an election. (Sections 85500(a) and 84204; *Californians for Fair Representation – No on 77 v. Superior Court*, 138 Cal. App. 4th 15, 41 Cal. Rptr. 3d 148 (Cal. App. 3d Dist. 2006).)

expenditures counted by the regulation include the committee's contributions to and expenditures on candidates and measures, as contained in Schedule D of the committee's reports.³

The regulation provides that if more than half of a committee's activity is on state candidates and measures, then the committee is a "state" general purpose committee, filing reports with the Secretary of State. (Proposed Reg. 18227.5(a)(1).) Similarly, if more than half of a committee's activity is at the county or city level, then the committee is a "county" or "city" general purpose committee, respectively, filing with the county or city clerk. (Proposed Reg. 18227.5(b)(1) and (c)(1).)

In addition, if a general purpose committee makes \$50,000 or more in expenditures on state candidates and measures, it is categorized as a "state" committee and required to file at the state level. (Proposed Reg. 18227.5(a)(1).) This ensures that even a committee that is very active on a local level, with state activity under the 50 percent threshold, will still be considered a "state" committee and file electronic reports with the Secretary of State, if it spends \$50,000 or more on state candidates and measures. Following the statute, political party committees and their central committees, are defined as "state" general purpose committees and required to file at the state level. (Section 82027.5(b) and Proposed Reg. 18227.5(a)(2).)

Enacting this regulation will help keep committees whose activity is focused on the city and county level filing at the local level. Under current advice, if a local general purpose committee makes several contributions to the State Assemblyman from the district (anything other than a de minimis contribution), that committee changes status to a "state" committee. (*Moll* Advice Letter, No. A-97-080.)

Proposed Regulation 18247.5 Primarily Formed Committee: Interpreting Section 82047.5, this regulation provides that a committee is considered to be "primarily formed" to support or oppose a candidate or measure (or slate of specific candidates or measures on the same ballot) if it makes *70 percent or more* of its total contributions and expenditures on behalf of the candidate or measure.

As noted above, additional reporting requirements apply to primarily formed committees that do not apply to general purpose committees. For candidate and ballot measure committees, these include automatic preelection reports, and election cycle reports and late period reports of contributions received. Primarily formed ballot measure committees are also subject to the advertisement disclosure provisions requiring them to state their top two donors of \$50,000 or more on broadcast ads, and to identify the economic or other special interest of their \$50,000 donors in their committee name. (Sections 84503 and 84504.)

³ Because these are general purpose committees, rather than primarily formed committees, they generally do not make direct expenditures on candidates or measures. They make contributions to or independent expenditures on candidates and measures. The activity of a general purpose committees for or against candidates or measures is summarized on the committee's Schedule D, as required by Section 84211(k)(5).

The proposed regulation requires committees to calculate whether 70 percent of their expenditures are for a particular candidate or measure at the end of each calendar quarter. (Proposed Regulation 18247.5(b).) To calculate the percentage, the committee counts contributions and expenditures made to support or oppose candidates or measures during the current and previous calendar years.⁴ (Proposed Regulation 18247.5(b).) Because the regulation is aimed at counting contributions and expenditures made on candidates or measures, the committee's expenditures for administrative overhead and compliance are excluded from the calculation.

By setting the threshold for activity at 70 percent and having a two-year look back, the regulation seeks to avoid requiring committees to change their status too frequently from a general purpose to a primarily formed committee or vice versa. The regulation does, however, attempt to get the added disclosure that is required for primarily formed committees from committees that fit this statutory definition by spending the vast majority of their funds on a particular candidate or measure. Accordingly, the regulation will sometimes require a change in a committee's status to reflect a change in the committee's political activity.

Recommendation: Staff recommends that the Commission approve for public notice Regulations 18227.5 and 18247.5 interpreting the statutory definitions of general purpose and primarily formed committees.

Attachments:

- 1 – Sections 82027.5 and 82047.5
- 2 - Proposed Regulation 18227.5
- 3 - Proposed Regulation 18247.5

⁴ For purposes of the audit selection criteria under Sections 90001 and 90002, Regulation 18992 defines committees primarily formed to support or oppose a particular candidate or measure to mean a committee (other than a controlled committee) that has made more than one half of its expenditures on behalf of the candidate or state ballot measure for the period to be audited. The period to be audited generally covers four years for a committee supporting or opposing statewide and Senate candidates, and includes all campaign statements filed by a committee in connection with a measure.